IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 2212 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE A.M.KAPADIA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : YES

HASHMIKANT M SHETH

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 2212 of 2004

MR MAHENDRA K PATEL for Petitioner No. 1

MR VIPUL M PANCHOLI APP for Respondent No. 1

MR GM AMIN for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE A.M.KAPADIA

Date of decision: 28/06/2004

ORAL JUDGEMENT

In this petition filed under Section 482 of the Code of Criminal Procedure ('the Code' for short) the petitioner against whom Criminal Complaint bearing No.558 of 2003 is filed in the Court of learned Judicial Magistrate, First Class, Ahmedabad (Rural) for commission of alleged offence under Section 138 of Negotiable

Instruments Act ('the Act' for short) in which process has been issued, has prayed to quash and set aside the complaint and process issued thereunder, on the grounds stated in the petition.

2. The petitioner is the original accused whereas respondent No.2 is the original complainant in the above referred criminal complaint. Therefore, for the sake of convenience and brevity, the petitioner is referred to as "the accused" whereas respondent No.2 is referred to as "the complainant" hereinafter in this judgment.

3. As per the averments made in the petition, the accused came in contact with the complainant and therefore as and when the accused was in need of money he used to borrow money from the complainant. The transaction started between both of them since 1992-93 and the last transaction between them took place in the year 1998. In that connection the accused was asked to issue blank cheques for the purpose of surety and security. The accused was having his account Nos. 201534 and 3546583 with Bank of Baroda. The accused accordingly issued blank cheques in favour of the complainant as per the demands made by him. It was agreed between them that the complainant shall not deposit the said cheques without prior intimation to the accused. It is pleaded by the accused that according to the complainant the accused was required to pay Rs.2,70,000/- towards the outstanding dues including interest. Therefore, in that connection, the accused had approached the complainant to settle his account on 15.8.2002 and had accepted his liability, though according to the accused all these facts are concocted and the same are alleged only with a view to create false evidence. According to the accused, the complainant used the said blank cheques issued by the accused in the year 1998 in respect of the last alleged transaction and entered the dates of all the cheques for the period between 1.9.2002 to 10.11.2002. The accused was not intimated regarding the dates, amount entered in the cheques by the complainant. To the great shock and surprise of the accused, the complainant deposited all the ten cheques with his banker Ahmedabad District Cooperative Bank Limited, Aslali Branch on 24.12.2002, the total amount of which comes to Rs.2,40,000/-. The said cheques were dishonoured on the ground of "exceed arrangement and account closed".

3.(i) On return of the said cheques, the complainant issued notice to the accused under section 138 of the Act on 31.12.2002. According to the accused, in the said

notice, the complainant has stated incorrect and fabricated facts with a view to use the same as a piece of evidence against him before the appropriate court of law.

3.(ii) The accused replied to the said notice vide his reply dated 10.1.2003 wherein the accused has categorically denied all the allegations made by the complainant in his notice dated 31.12.2002.

3.(iii) Notwithstanding the reply given by the accused, the complainant has filed the impugned complaint in the court of learned Judicial Magistrate, First Class, Ahmedabad (Rural) for commission of the alleged offence punishable under section 138 of the Act and the learned Magistrate has issued summons against the accused.

3.(iv) According to the accused, the complainant has also filed two other Criminal Complaints for commission of the alleged offence under section 138 of the Act in respect of other cheques. According to the accused the impugned complaint is filed with a malafide and bad intention to harass him and to extort money from him. The impugned complaint therefore is nothing but a sheer abuse of process of law. Therefore the petitioner has approached this Court by filing present petition under section 482 of the Code claiming the reliefs to which reference is made in earlier paragraphs of this judgment.

4. This petition was listed for admission hearing before this Court (Coram: Sharad D. Dave, J.) on 19.3.2004 and this Court on that day issued notice making it returnable on 2.4.2004.

5. In response to the service of notice, Mr. Vipul M. Pancholi, learned APP has appeared for respondent No.1 State and Mr. GM Amin, learned advocate has filed his appearance on behalf of respondent No.2- complainant.

6. Mr. Mahendra Patel, learned advocate of the petitioner, strenuously contended that after closure of the account maintained by the accused with his banker the cheques were drawn and issued to the complainant and therefore as on the date of issuance of cheques no account was maintained by the accused with his banker and hence offence in terms of Section 138 of the Act is not made out as a result of which the complaint deserves to be quashed and accordingly it is urged that the complaint may be quashed.

7. Besides this, he has also raised several other

contentions which do not deserve consideration and, therefore, they are not referred to in this judgment.

8. In support of the aforesaid contention, Mr. Mahendra Patel, learned advocate of the petitioner, has placed heavy reliance on the decision of learned Single Judge of this Court in the case of Urban Co-operative Credit Society, Borsad v. State of Gujarat and another, 2003 (3) GLR 2207.

9. In counter submission, Mr. Vipul M. Pancholi, learned APP for respondent No.1 - State pleaded that the phrase "on an account maintained by him" would include "on an account maintained and closed by him" and having regard to the laudable object with which Section 138 of the Act is enacted, the interpretation canvassed by the learned advocate of the petitioner should not be accepted. It was asserted by Mr. Pancholi that the decision of the learned Single Judge which is relied upon by the learned advocate of the petitioner is not a good law and is "per incuriam" inasmuch as relevant part of paragraph 7 of the decision of the Supreme Court in the case of NEPC Micon Ltd. and others v. Megma Leasing Ltd., AIR 1999 SC 1952 is not only ignored but the said decision is contrary to well settled canons of interpretation of statute and therefore in view of the principles laid down therein, the principle laid down in the judgment of the learned Single Judge would not be applicable to the facts of the instant case.

10. To support the aforesaid contention, the learned APP has taken pains to point out the following decisions:

(i) NEPC Micon Ltd. and others v. Megma Leasing Ltd., AIR 1999 SC 1952;
(ii) Goaplast Pvt. Ltd. v. Shri Chico Ursula D'Souza and another, AIR 2003 SC 2035;
(iii) (M/s.) Dada Silk Mills and others v. Indian Overseas Bank and Banking Co., Surat and another, 1995 (1) GLH 458 (Gujarat High Court);
(iv) G. Venkataramanaiah v. Sillakollu Venkateswarlu and another, 1999 (2) Crimes 171 (Andhra Pradesh High Court);
(v) S.V. Rajendra Singh v. Lahari Recording Co. Pvt. Ltd., 2000 DoCh. 521 (Karnataka High Court);
(vi) Salim v. Thomas, 2004 (1) DCR 524 (Kerala High Court).

10. This Court has considered the rival submissions advanced by the learned advocates appearing for the

parties and the decisions cited at the bar.

11. Before dealing with the submissions posed for consideration of this court, it would be worthwhile to notice the object and reason which prompted the Legislature to introduce section 138 in the Act.

12. The Act was amended by the Banking, Public Financial Institutions and Negotiable Instruments Laws (Amendment) Act, 1988 wherein a new Chapter XVII was incorporated for penalties in case of dishonour of cheque due to insufficiency of fund in the account of the drawer of the cheque. This provision was incorporated with a view to encourage the culture of use of cheques and enhancing the credibility of the instrument.

13. The Supreme Court has noticed the object of section 138 of the Act in Goaplast's case (supra) and has held in para 3 of the reported decision as under:

> "...For appreciating the issue involved in the present case, it is necessary to refer to the object behind introduction of Chapter XVII containing Sections 138 to 142. This Chapter was introduced in the Act by the Banking, Public Financial Institutions and Negotiable Instruments Laws (Amendment) Act, 1988 (Act 66 of 1988) with the object of inculcating faith in the efficacy of banking operations and giving credibility to negotiable instruments in business transactions and in order to promote efficacy of banking operations. With the policy of liberalisation adopted by the country which brought about increase in international trade and commerce, it became necessary to inculcate faith in banking. World trade is carried through banking operations rather than cash transactions. The amendment was intended to create an atmosphere of faith and reliance on banking system. Therefore, while considering the question of applicability of Section 138 of the Act to a situation presented by the facts of the present case, it is necessary to keep the objects of the legislation in mind. If a party is allowed to use a cheque as a mode of deferred payment and the payee of the cheque on the faith that he will get his payment on the due date accepts such deferred payment by way of cheque, he should not normally suffer on account of non payment. The faith, which the legislature has desired that such instruments should inspire in commercial transactions would be completely

> lost if parties are as a matter of routine allowed to interdict payment by issuing instruction to banks to stop payment of cheques. In today's world where use of cash in day to day life is almost getting extinct and people are using negotiable instruments in commercial transactions and plastic money for their daily needs as consumers, it is all the more necessary that people's faith in such instruments should be strengthened rather than weakened. Provisions contained in Sections 138 to 142 of the Act are intended to discourage people from not honouring their commitments by way of payment through cheques. It is desirable that the Court should ban in favour of an interpretation which serves the object of the statute. The penal provisions contained in Sections 138 to 142 of the Act are intended to ensure that obligations undertaken by issuing cheques as a mode of payment are honoured. A post-dated cheque will lose its credibility and acceptability if its payment can be stopped routinely. A cheque is a well recognised mode of payment and post-dated cheques are often used in various transactions in daily life. The purpose of a post-dated cheque is to provide some accommodation to the drawer of the cheque. Therefore, it is all the more necessary that the drawer of the cheque should not be allowed to abuse the accommodation given to him by a creditor by way of acceptance of post-dated cheque. If stoppage of payment of a post-dated cheque is permitted to take the case out of the purview of S.138 of the Act, it will amount to allowing the party to take advantage of his own wrong.

14. In light of the objects of the legislation, the question posed for consideration will have to be answered.

15. The object of the legislature is to enhance credibility of the instrument as well as to inculcate faith in the efficacy in banking operation. The negotiable instrument should inspire faith in commercial transaction. This faith would stand destroyed if parties to the negotiable instrument are permitted to play fraud. It is common knowledge that people are using the instrument in commercial transaction postdated cheques and therefore provisions of section 138 of the Act should be interpreted in a manner which discourages people from not honouring the commitment by way of payment through

cheque.

16. The word "account" which has been mentioned in the opening words of Section 138 of the Act only relates to the fund and not to the cheque and the Section only recognises a facility of discharging a debt by issuing a cheque. An account holder alone will be able to utilise that facility, if the drawer issues a cheque from a cheque book which was issued to him by the bank on the strength of the account which he had opened then it can definitely be said that the drawer perpetrated an evil design by closing the account and issuing the cheque. The Section takes care of all dishonest acts likely to be committed by the drawer of the cheque as the main purpose of the Section being to bring in the acceptability to the cheque.

17. An identical issue arose before the Bombay High Court and the Bombay High Court in the case of Shivendra Sansguiri v. Adineo, reported in 1996 Cr.L.J. 1816 looked into the problem unfolded from another angle. A learned Single Judge of the Bombay High Court (Panaji Bench) has observed in the judgment as under:

"Cheque facility is afforded by a Bank to its customer only when a customer opens an account in a Bank with funds. This is part of its Banking activity. This prerogative is available for a Bank under the provisions of the Banking Regulation Act. "Banking" has been defined under the said Act. Section 5 (a) of the Banking Regulation Act reads as under:

"Banking" means the accepting, for the purpose of lending or investment, of deposits of money from the public, repayable on demand or otherwise, and withdrawable by cheque, draft, order or otherwise."

This section clearly mandates that a cheque can be used by its customer for withdrawing the money from the Bank. When a customer of the Bank draws a cheque in discharge of his debt, the Banker steps into the shoes of the customer or drawer to pay the money shown in the cheque to the payee of the cheque. Law, therefore, does not take cognizable of a situation to issuance of a cheque without an account in the Bank. If any customer closes an account with the Bank, it is the legal responsibility of the Banker to see that all

unused cheque leaves are surrendered to the Bank and see that the cheque issued by the customer before closure of account is honoured. If any banker does not observe this obligation it is liable not only under the Banking Regulation Act but also liable for damages to the person in whose favour the cheque was issued. However, this obligation of the Banker does not absolve the drawer from the liability in the event of the cheque being dishonoured, under Section 138 of the Negotiable Instruments Act, if he closes the account before or after the issuance of the cheque because when cheque is drawn in discharge of a pecuniary liability, it can be always presumed that there exists an account in the Bank in the name of the drawer. This presumption, however, cannot be displaced by misusing cheque facility after closing the account. In such circumstances the drawer of the cheque is not only liable under Section 138 of the Negotiable Instruments Act, but also under Banking Regulation Act. At any stretch of reasoning, it cannot be said that such misuser of cheque is not liable under Section 138 of the Negotiable Instruments Act. To hold otherwise will render the whole object of the legislation infructuous".

18. Viewed in the light of the object with which Section 138 of the Act was introduced by legislature, there is no manner of doubt that the phrase "any cheque drawn by a person on an account by him with banker" will have to be construed to mean that "any cheque drawn by a person on an account maintained and closed by him". The words "on an account maintained" do not suggest that cheque must be drawn on an account which is in operation. The words "account maintained" would include "an account maintained and closed in past".

19. In this connection, it would be appropriate to refer to the observations made by Lord Denning, L.J., on the interpretation of statutes, which has been reproduced by the Supreme Court in the case of N.K. Jain v. C.K. Shah, reported in AIR 1991 SC 1289, to fully understand the implication of Section 138 of the Act, as interpreted by the superior Courts of jurisdiction, which reads as follows:

"The English language is not an instrument of mathematical precision. Our literature would be much poorer if it were. This is where the draftsmen of Acts of Parliament have often been

> unfairly criticised. A Judge, believing himself to be fettered by the supposed rule that he must look to the language and nothing else, laments that the draftsmen have not provided for this or that, or have been guilty of some or other ambiguity. It would certainly save the judges trouble if the Acts of Parliament were drafted with divine prescience and perfect clarity. In the absence of it, when a defect appears, a judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament, and he must do this not only from the language of the statute, but also from a consideration of the social conditions which gave rise to it and of the mischief which it was passed to remedy, and then he must supplement the written word so as to give 'force and life' to the intention of legislature. A judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in the texture of it, they would have straightened it out? He must then do so as they would have done. A judge must not alter the material of which the Act is woven, but he can and should iron out the creases."

20. It is not in dispute that the Supreme Court in NEPC Micon Ltd., (supra) has authoritatively ruled that where cheque is returned by the bank unpaid on the ground that the account is closed it would mean cheque is returned as unpaid on the ground that the amount of money standing to the credit of that account is insufficient to honour the cheque. According to the Supreme Court, cheque is dishonoured as the amount of money standing to the credit of "that account" was "nil" at the relevant time apart from it being closed. The Supreme Court has explained that closure of the account would be an eventuality after the entire amount in the account is withdrawn. It means that there was no amount in the credit of "that account" on the relevant date when the cheque was presented for honouring the same. What is laid down as a proposition of law by the Supreme Court is that the expression "the amount of money standing to the credit of that account is insufficient to honour the cheque" is a genus of which the expression "that account being closed" is specie. The Supreme Court has held for the guidelines of the Courts in the country that even though Section 138 of the Act is a penal statute, it is the duty of the Court to interpret it consistent with the legislative intent and purpose so as to suppress mischief

and advance remedy.

21. The above referred to principles have been laid down by the Supreme Court while examining the effect of closure of account after issuance of cheque. The principle laid down by the Supreme Court would apply with all force to a case where the account is first closed and thereafter cheque is issued. The interpretation sought to be placed by this Court is not only consistent with the legislature intent and purpose but suppress mischief and advance the remedy.

22. What is important to notice is that dishonour of a cheque on the ground other than those enumerated in section 138 of the Act can be culpable where dishonest intention can be presumed. The object for enacting Section 138 of the Act makes it clear that the intention of the parliament was that honest drawer should not suffer at the machination of dishonest drawee. Therefore, intention of a person issuing a cheque becomes pertinent where a person issues a cheque on an account closed, he treats the said account as operative and induces the person to whom the cheque is issued to believe that the same would be honoured on presentation. When the cheque drawn on an account is returned by the banker with the endorsement that the account is closed, it exhibits a complete dishonest intention of the person who issued the cheque and therefore would be an offence punishable under Section 138 of the Act.

23. It is also profitable to refer to the judgment delivered by a Division Bench of the Bombay High Court in Rakesh Parwal v. Narayan Joglekar, 1993 Cr.LJ, 680 (Bombay) (DB) which has also been referred to in detail by this Court (Coram: S.D. Shah,J. as he then was) in the case of (M/s.) Dada Silk Mills and others v. Indian Overseas Bank and Banking Co., Surat and another, reported in 1995 (1) GLH 458 (paras 21, 30, 32, 39 and 43). The Division Bench of the Bombay High Court, while leading the broadest possible applicability to Section 138 of the Act, treating dishonour, by reference to Black's Law Dictionary, in sum and substance, as a situation whereby 'payment is refused or cannot be obtained', proceeded to observe as follows:-

> "A clear reading of Section 138 leaves no doubt in our mind that the circumstances under which such dishonour takes place are required to be totally ignored. In this case, the law only takes note of the fact that the payment has not been forthcoming and it matters little that any

of the manifold reasons may have caused that situation. If, for instance, the closure of an account or the stoppage of payment or any other of the common-place reasons for dishonour were to be justifiable, then, the legislature would have set these out in the section, as exceptions not constituting an offence. No such intention can be read into Section 138, as none exists. The solitary exception made by the legislature is with regard to the drawer being offered a final opportunity of paying up the amount within 15 days from the receipt of notice which, in other words, provides a last opportunity to prove one's bona fides. It is obvious, that having regard to the wide-spread practice of issuing cheques which are dishonoured and the many ingenious methods of avoiding payment that are practised, that the legislature has opted for a non-nonsense situation. The possibility has not been overlooked whereby an account may inadvertently be overdrawn or a dishonour may be for technical reasons or where a genuine mistake has occurred and the grace period provided for by the Legislature after service of notice on the drawer is in order to afford an opportunity for the drawer to rectify these. Unfortunately, even when the dishonour has taken place due to the dishonesty of the depositor, the drawer is still given a last chance to act otherwise. Consequently, the reasons for dishonour even if they be very valid as was sought to be pointed out in this case, should not and cannot be taken into account by a Magistrate when such complaint is presented".

The Division Bench, referring to the word 'etc.' appearing in the marginal note to Section 138 of the Act came to the conclusion that 'the overriding clause in section 138 revolved around the concept of inability to obtain payment, the manifold situations giving rise to that result being secondary. The Bench criticially commenting the decision of the single Judge to the effect that Section 138 would not be applicable to a situation wherein a cheque was dishonoured on the ground of 'closure of account' observed as under:-

"This, in our mind, is too narrow a construction of the section and fails to take into account the objects and reasons

behind the amendment. The wording and the endorsement from the Bank or the circumstances under which a cheque is returned are not the guiding criterion but the fact that on presentation of the cheque, the payment was not made. There could be a host of reasons for this but the bottom line of the situation is that the payment could not be made by the Banker and the machanics of the reasons apart, the irresistible conclusion that had the funds been available, the payment would have been made leads back to the position that dishonour, therefore, implies insufficiency of funds".

Referring to Sections 5 and 6 of the Negotiable Instruments Act for the purposes of stressing that every cheque is bill of exchange and that every bill of exchange is an 'unconditional order' to pay the amount stated therein, the Bench observed as follows:-

"Reading these provisions with statement of objects and reasons of the banking Public Financial Institutions and Negotiable Instruments Law (Amendment) Act, 1988 (66 of 1988) whereby Chapter 17 comprising of Sections 138 to 142 were inserted with effect from 1.4.1989, there can be little doubt that Section 138 was intended to be a provision to curb instance of dishonour. It will have to be presumed that the multifarious grounds on which a cheque would be dishonoured are common place and in not having made any exception for such situations the legislative intend behind Section 138 was that cases of dishonour of a cheque would constitute a criminal offence unless the payment was forthcoming within the prescribed period. The reference to the term 'insufficiency of funds' was obviously a qualifying clause which only reiterates the basic principle that an order to the Bank conveyed through a cheque to make a prescribed payment would only fail in a situation where the Bank could not implement that direction for want to requisite funds. The circumstances that may contribute to the

situation would, therefore, be irrelevant. The presumption in Section 139 heavily supports this view."

24. It is true that in Urban Cooperative Credit Society (Supra) the learned Single Judge has taken the view that when the bank account is closed prior to issuance of cheque to the complainant, the requirement occurring in Section 138 of the Act in words "any cheque drawn on an account maintained" is not satisfied and no offence is committed. However, on the close scrutiny of the said decision, it becomes manifest that the learned Single Judge had no occasion to consider the object and reason which prompted the legislature to introduce Section 138 in the statute and before distinguishing the law laid down by the Supreme Court in NEPC Micon Ltd. (supra) has not noticed and ignored pertinent observation made by the Supreme Court in paragraph 7 of the reported decision. The relevant portion of paragraph 7 which is ignored by the learned Single Judge is as under:

"Further, the offence will be complete only when the conditions in the provisos (a), (b) and (c) are complied with. Hence, the question is, in a case where cheque is returned by the bank unpaid on the ground that the 'account is closed', would it mean that cheque is returned as unpaid on the ground that 'the amount of money standing to the credit of that account is insufficient to honour the cheque'. In our view, the answer would obviously be in the affirmative because cheque is dishonoured as the amount of money standing to the credit of 'that account' was 'nil' at the relevant time apart from it being closed. Closure of the account would be an eventuality after the entire amount in the account is withdrawn. It means that there was no amount in the credit of "that account" on the relevant date when the cheque was presented for honouring the same. The expression "the amount of money standing to the credit of that account is insufficient to honour the cheque" is a genus of which the expression "that account being closed" is specie."

25. If the relevant para of the reported decision of the Supreme Court which is quoted above had been brought to the notice of the learned Single Judge, in all probabilities, the learned Single Judge would not have taken the view which is expressed in his decision. It is well settled that judgment rendered in ignorance of

binding law laid down by the Supreme Court would be judgment per incuriam and would lose all its efficacy as a binding precedent. The decision sought to be relied upon by the learned advocate of the petitioner is rendered by the learned Single Judge of this Court in ignorance of binding principles laid down by the Supreme Court in the case of NEPC Micon Ltd. (supra) and therefore decision of the learned Single Judge will have to be regarded as a judgment per incuriam.

26. The learned Single Judge has also ignored the relevant observations made in para 15 of the judgment rendered by the Supreme Court in NEPC Micon Ltd., (Supra) which reads as under:

> "In view of the aforesaid discussion we are of the opinion that even though Section 138 is a penal statute, it is the duty of the Court to interpret it consistent with the legislative intent and purpose so as to suppress the mischief and advance the remedy. As stated above, Section 138 of the Act has created a contractual breach as an offence and the legislative purpose is to promote efficacy of banking and of ensuring that in commercial or contractual transactions cheques are not dishonoured and credibility in transacting business through cheques is maintained. The above interpretation would be in accordance with the principle of interpretation quoted above 'brust away the cobweb varnish, and show the transactions in their true light' (Wilmot C.J.) or (by Maxwell) "to carry out effectively the breach of the statute, it must be so construed as to defeat all attempts to do, or avoid doing, to an indirect or circuitous manner that it has prohibited." Hence, when the cheque is returned by a bank with an endorsement 'account closed', it would amount to returning the cheque unpaid because "the amount of money standing to the credit of that account is insufficient to honour the cheque" as envisaged in Section 138 of the Act.

27. Accordingly, it is held that the decision of the learned Single Judge in the case of Urban Cooperative Credit Society, Borsad (supra) is judgment per incuriam and has no value as a binding precedent.

28. In view of the above discussion, it is held that offence in terms of Section 138 of the Act would stand committed even if cheque issued after closure of account

is dishonoured because the amount of money standing to the credit of "that account" would be "nil" at the relevant time apart from it being closed. Therefore, the contention that after closure of the account maintained by the drawer if cheque was issued then no offence in terms of Section 138 of the Act is made out, has no force and substance and is therefore rejected.

29. In view of the above, I find no substance in the petition and the petition deserves to be rejected.

30. In the result, the petition is rejected. Notice is discharged.

31. Having regard to the importance of the issue decided in this judgment and likely adverse effect of decision in the judgment rendered in the case of Urban Cooperative Credit Society (supra) on the cases pending in the trial courts of the State, the Registry is directed to circulate this judgment to all the judicial officers of the State forthwith.

(A.M. Kapadia, J.)

(karan)